

**CONTRACT FOR THE PURCHASE OF AN ANITA MOX MBBR SYSTEM
FOR THE SOUTH DURHAM WRF**

This contract is dated, made, and entered into as of the _____ day of _____, 20____, by the City of Durham ("City") and I. Kruger Inc. ("Supplier"), a corporation organized and existing under the laws of North Carolina;

Sec. 1. Background and Purpose. The system supplied by Supplier utilizes the ANITA Mox MBBR process, which is a continuous flow-through, non-clogging bio-film reactor containing media with a high specific surface area.

Sec. 2. Product Description and Delivery. The Supplier shall furnish all labor, services, equipment and all other items and facilities necessary to supply and deliver the equipment items as detailed in its Scope of Supply, attached hereto as Exhibit A. In this purchase contract, the term "goods" includes "goods" as that term is used in the Uniform Commercial Code (N. C. version), apparatus, materials, supplies, and equipment.

Sec. 3. Standard Purchase Contract Terms.

- (a) THE CITY OF DURHAM IS NOT RESPONSIBLE FOR GOODS DELIVERED OR SERVICES PERFORMED WITHOUT AUTHORITY OF ITS WRITTEN CONTRACT.
- (b) Do not overship or substitute. Ship exactly as contracted. The City reserves the right to reject and return at shipper's expense any and all goods delivered which do not conform to our description or specification. All goods received subject to inspection and acceptance by the City of Durham.
- (c) All shipping charges must be FULLY PREPAID TO POINT OF DELIVERY, unless otherwise arranged for and expressly stated on this contract.
- (d) Include itemized packing slips with all shipments or deliveries. Show name of DEPARTMENT of the City for which delivery is intended.
- (e) If there is any part of this contract you cannot fill promptly or within the time specified, notify the Department of Water Management at once. In case of unreasonable delay in delivery or delivery of goods inferior to those specified, or in case of any other default of the Supplier, the Department of Water Management shall have the right at its option to cancel this contract in whole or in part via written notice to Supplier which shall be effective upon receipt.
- (f) The workmanship, quantities or qualities of goods delivered or services performed which are to be paid for hereunder shall be in conformance with Supplier's Scope of Supplier in attached Exhibit A.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract including Exhibit A, the Supplier shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, and services, necessary to supply and deliver the equipment items as detailed in its Scope of Supply, attached hereto as Exhibit A.

Sec. 5. Supplier's Billings to City. Compensation. The Supplier shall send invoices to the City on the following basis for the amounts to be paid pursuant to this contract: as described in Exhibit A, Section 1.4. Each invoice shall document, to the reasonable satisfaction of the City; such information as may be reasonably requested by the City. Within twenty days after the City receives an invoice, the City shall send the Supplier a check in payment for all undisputed amounts contained in the invoice, and no retention shall be withheld from any invoice submitted by Supplier to City.

The City shall not be obligated to pay the Supplier any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 6. Insurance. See Exhibit A for Evidence of Insurance.

Sec. 7. Exhibits. The following exhibits are made a part of this contract:

Exhibit A: Supplier's Scope of Supply dated 12/05/2012 containing 68 page(s).

In case of conflict between Exhibit A and the text of this contract excluding the exhibit, the text of Exhibit A shall control.

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Sec. 8. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Donald F. Greeley, Department Director
Department of Water Management
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329
The fax number is (919)560-4479
Email:
Don.greeley@durhamnc.gov

To the Supplier:

I. Kruger Inc.
Attn: Brian Frewerd
4001 Weston Parkway
Cary, NC 27513
The fax number is 919-677-0082.
Email: brian.frewerd@veoliawater.com

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 9. Warranties and Indemnification. Seller represents and warrants that all of the goods furnished under this purchase contract, the process by which those goods are made, and their use for their intended purpose as described in Exhibit A will not infringe any patent, trademark, or other rights of any other person, firm, or corporation, and Seller shall defend, indemnify, and hold harmless City and its officers, officials, agents, contractors, and employees from and against any and all claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses (including interest and reasonable attorney's fees assessed as part of any such item) arising out of any actual or alleged infringement of any such patent, trademark, or other rights. The foregoing obligations of Supplier do not apply with respect to any goods that are (i) manufactured in compliance with specifications supplied by or on behalf of the City; (ii) modified by the City or any third party without the prior written consent of Supplier to the extent that the alleged infringement relates to such modification; or (iii) combined with other goods, processes or materials not supplied by Supplier to the extent that the alleged infringement relates to such combination. See Exhibit A, Section 2, Items 6 and 7 for additional warranty and indemnification terms.

Sec. 10. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection.

(b) Waiver. No action or failure to act by either party shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

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(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Compliance with Law. In performing all of the Work, the Supplier shall comply with all applicable law.

(e) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS SUPPLIERS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(f) EEO Provisions. During the performance of this Contract the Supplier agrees as follows: (1) The Supplier shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Supplier shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Supplier shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Supplier shall in all solicitations or advertisement for employees placed by or on behalf of the Supplier, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Supplier shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Supplier's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Supplier ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Supplier shall include these EEO provisions in every purchase contract for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(g) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract including Exhibit A.

Sec. 11. Termination for Convenience ("TFC"). (a) *Procedure.* Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor 10 days' written notice that refers to this section. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, including any payment obligations, and the indemnification provisions and the section of this contract or of Exhibit A titled or discussing any Ownership or other rights in intellectual property, Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

See Exhibit A for other terms and conditions that are a part of this contract, including but not limited to Sections 1 and 2 in their entirety (see Section 2, Item 10 for Supplier's Limitation of Liability).

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IN WITNESS WHEREOF, the City and the Supplier have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ACCEPTED AND AGREED:

ATTEST:

CITY OF DURHAM

_____ By: _____

Preaudit Certification, if necessary:

I. Krüger Inc.

By: _____

Mike Gutshall

Title of officer: _____

President

(Affix corporate seal.)

State of _____

ACKNOWLEDGMENT BY CORPORATION

County of _____

I, a notary public in and for the aforesaid county and state, certify that

_____ personally appeared before me this day and stated that he or she is (~~strike through the inapplicable:~~) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of I. Krüger Inc a corporation, and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract or agreement with the City of Durham and the

corporate seal was affixed thereto. This the _____ day of _____, 20_____.

My commission expires:

_____ Notary Public